

FILED

2014 AUG 13 AM 9:30

MARY ELLEN DUNLAP
CLERK OF SUPERIOR COURT

BY _____
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APPEALS
BONDS: REFUND/FORFEITURE
FINES/ATTY. FEES/RESTITUTION
ATTORNEY: APPT & CLAIMS
COUNTY ATTY./LORI ZUCCO
DEFENSE ATTY./JOEL P. BOROWIEC, ESQ.
ARIZONA DEPT OF CORRECTIONS
C.C.S.O. JAIL
ADULT PROBATION DEPARTMENT
DONNA HARRIS, DEPUTY CLERK
MAILED

SUPERIOR COURT OF ARIZONA
COUNTY OF COCHISE

Date August 11, 2014

CASE: STATE OF ARIZONA

vs. KIRBY TRENT FULTON
Date of Birth: 02/14/1975

SENTENCE OF IMPRISONMENT

CASE NO: CR201300510

JUDGE HONORABLE JAMES L. CONLOGUE
DIVISION Five
COURT REPORTER Aaron Schlesinger
ADDRESS & PHONE -----

MARY ELLEN DUNLAP, CLERK

By Kathy Bergman (08-11-14) Deputy Clerk
Docketed by

Interpreter:

1:47 P.M. The State is represented by Lori Zucco, Deputy County Attorney; The Defendant is present with counsel, Joel P. Borowiec, Esq.

The Court stated that the Presentence Report has been reviewed by the Court.

LET THE RECORD REFLECT the Defendant was given the opportunity and declined to speak on his own behalf.

Mr. Borowiec had nothing to add.

LET THE RECORD REFLECT the victim, John Drake, was present and addressed the Court.

The Court inquired of Ms. Zucco concerning the restitution amount in the CR201300510 and CR201300511 cases.

Ms. Zucco had nothing further to add.

Pursuant to A.R.S. Section 13-607, the Court finds as follows:

[XX] WAIVER OF TRIAL The Defendant knowingly, intelligently and voluntarily waived his right to a trial with or without a jury, his right to confront and cross-examine witnesses, his right to testify or remain silent and his right to present evidence and call his own witnesses after having been advised of these rights. The determination of guilt was based upon a plea of GUILTY.

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- See Order Amending
Sentencing Document Filed: 8/27/14 -

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Five
Div

August 11, 2014
Date

HONORABLE JAMES L. CONLOGUE
Judge

Kathy Bergman
Deputy

No. **CR201300510** STATE vs **KIRBY TRENT FULTON**

Having found no legal cause to delay rendition of judgment and pronouncement of sentence, the Court enters the following judgment and sentence:

IT IS THE JUDGMENT OF THE COURT that the Defendant is guilty of the following crime, that upon due consideration of the facts, law and circumstances relevant here, the Court finds that suspension of sentence and a term of probation are not appropriate and that a sentence of imprisonment with the Department of Corrections is appropriate.

THE COURT FURTHER FINDS that there are circumstances sufficiently substantial to call for a term of imprisonment as indicated on the following page. These circumstances are stated by the Court on the record.

AS PUNISHMENT, **IT IS ORDERED** that the Defendant is sentenced to a term of imprisonment and is committed to the Arizona Department of Corrections as follows:

Five
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August 11, 2014
Date

HONORABLE JAMES L. CONLOGUE
Judge

Kathy Bergman
Deputy

No. CR201300510 STATE vs KIRBY TRENT FULTON

OFFENSE: Committed theft by means of transportation by, without lawful authority, knowingly controlling another's means of transportation with the intent to permanently deprive, to wit: a Buell motorcycle belonging to MV,

FELONY CLASS: Class 3 felony as alleged in Count 1 of the Plea Agreement formally Count 1 of the Indictment as amended.

IN VIOLATION OF A.R.S. § 13-1814(A)(1), 13-105, 13-701, 13-702, and 13-801

DATE OF OFFENSE: Committed on or about the 24th day of June, 2012

SENTENCE: The Defendant shall be committed to the Arizona Department of Corrections for the term of three (3) years.

	MITIGATED		PRESUMPTIVE		AGGRAVATED
XX	NONDANGEROUS		DANGEROUS PURSUANT TO A.R.S. § 13-604		
XX	NONREPETITIVE		REPETITIVE PURSUANT TO A.R.S. § 13-703 Category 1 Repeat Offender		
	NONDANGEROUS BUT VIOLATIVE OF A.R.S. §13-604.01(B)			DANGEROUS AND VIOLATIVE OF	

This sentence is to date from this date, August 4, 2014. The Defendant is to be given credit for two hundred and forty-eight (248) days time served prior to sentencing. This sentence will run concurrent with the sentence in the CR201300511 case and the Federal sentence the Defendant is currently serving.

IT IS ORDERED that the Defendant is to serve 85% of the Sentence imposed.

IT IS FURTHER ORDERED that the Defendant will **NOT** be required to serve one (1) day of Community Supervision for every seven (7) days of incarceration. The Defendant will begin a Sentence of Probation upon his release from prison. (See separate attached document)

Five
Div

August 11, 2014
Date

HONORABLE JAMES L. CONLOGUE
Judge

Kathy Bergman
Deputy

No. CR201300510 STATE vs KIRBY TRENT FULTON

MONETARY ASSESSMENTS

[XX] **ORDERED** restitution paid to the victim in the amount of \$2,400.30, and a \$20.00 time payment fee, \$20.00 probation surcharge, and a \$13.00 law enforcement assessment.

[XX] **ORDERED** that restitution shall be paid while incarcerated in an amount to be determined by the Arizona Department of Corrections in compliance with A.R.S. §§31-230.

No. CR201300510 STATE vs KIRBY TRENT FULTON

The Defendant was advised concerning rights of post conviction relief, and written notice of those rights was provided.

ORDERED exonerating any bond issued herein and revoking any conditions of release.

ORDERED counts 2-5 of the Plea Agreement are dismissed.

ORDERED remanding the Defendant into the custody of the Sheriff of Cochise County, authorizing the Sheriff of Cochise County to hold the Defendant in custody until such time as he can be delivered to the proper authorities of the Arizona Department of Corrections, and to deliver the Defendant to the custody of the Arizona Department of Corrections, and authorizing the Department of Corrections to carry out the term of imprisonment set forth herein.


ORDERED that the Clerk of the Superior Court shall remit to the Department of Corrections a copy of this Order, together with all pre-sentence reports, probation violation reports, medical and psychological reports relating to the Defendant and involving this cause.

Let the record reflect that the Defendant's right index fingerprint is permanently affixed to this sentencing order in open Court.

FILED: Notice of Rights of Review After Conviction, signed by the Defendant.

1:56 P.M. Hearing Concludes.





JAMES L. CONLOGUE
JUDGE OF THE SUPERIOR COURT